IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7117 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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YOGI TEXTURISERS LTD

Versus

UNION OF INDIA

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Appearance:

1. Special Civil Application No. 7117 of 2002
M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR DN PATEL for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 1
NOTICE SERVED for Respondent No. 2
..... for Respondent No. 3-4

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 30/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by learned Senior Standing Counsel for the Central Government Shri D.N. Patel for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The grievance, which has been ventilated by the petitioners in this petition, is with regard to non-payment of the amount of pre-deposit, which petitioner No. 1 had given to the respondent authorities while proceeding with an appeal.

3. The facts giving rise to the present petition, in a nutshell, are as under :

4. Petitioner No. 1 company was asked to pre-deposit a sum of Rs. 5,74,000/- as the petitioner had challenged the validity of an order passed by respondent No. 2 before the appellate authority. As directed by the appellate authority, petitioner No. 1 had deposited a sum of Rs. 5,74,000/- by way of pre-deposit. Ultimately, the appeal had been allowed. As petitioner No. 1 had succeeded in the appeal, the amount of pre-deposit ought to have been refunded to petitioner No. 1 by the respondent authorities. It appears that in spite of several reminders, as the amount of pre-deposit was not refunded, petitioner No. 1 had filed a claim for refund on 19.12.2001. The said refund was sanctioned under order-in-original No. OIO/REFUND/11/DN.II/Ank/2002 dated 5.6.2002 in full, but the said amount of refund had not been paid to petitioner No. 1 because, according to the respondent authorities, some amount was to be recovered from petitioner No. 1.

5. Ultimately, even the another claim, which the respondent authorities had made against petitioner No. 1, was not found to be justified and the appeal filed by petitioner No. 1 with regard to another claim had also been allowed.

6. Thus, it is clear that the amount of pre-deposit of Rs. 5,74,000/-, which was due and payable by the respondent authorities to petitioner No. 1, had not been paid and therefore the petitioners have been constrained to approach this court.

7. During the pendency of this petition, after some adjustments, by an order dated 19.9.2002, respondent No. 3 has sanctioned a refund of Rs. 5,73,192/- to petitioner No. 1 and the said amount has already been paid to petitioner No. 1 by a cheque of the same date.

8. Thus, the grievance with regard to repayment of the amount of pre-deposit has been redressed during the pendency of this petition. However, the grievance which still survives is with regard to payment of interest on the amount, which had been retained by the respondent authorities without any justifiable reason.

9. Shri D.N. Patel, Senior Standing Counsel, could not justify retention of the amount of pre-deposit by the respondent authorities especially in view of the fact that the appeal, which was filed by petitioner No. 1, had been allowed. In the circumstances, the amount of pre-deposit ought to have been refunded to petitioner No. 1 immediately.

10. In view of the above fact, the only question that survives is with regard to awarding interest and costs to petitioner No. 1. It has been submitted by the learned advocates that on the amount, which is to be refunded to the assessee, the respondent authorities are supposed to pay interest at the rate of 15%. The appeal was allowed on 17th September 2001 and, therefore, the amount of pre-deposit ought to have been refunded to petitioner No. 1 immediately thereafter. As a matter of fact, the amount ought to have been paid on the date on which the appeal had been allowed and petitioner No. 1 had succeeded. Looking to the fact that the amount of pre-deposit had been retained by the respondent authorities for a considerably long period without any rhyme or reason, we direct the respondent authorities to pay interest @ 15% p.a. on the said amount to petitioner No. 1 with effect from 18.12.2001 till the date on which the amount had been paid to petitioner No. 1 i.e. 19.9.2002. Moreover, we also award a sum of Rs. 10,000/- by way of costs. The amount of interest and costs shall be paid to petitioner No. 1 within a period of four weeks from the date of receipt of the writ or a certified copy of this order by the concerned respondent.

The petition stand disposed of as allowed. Rule is made absolute. Direct service is permitted.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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